



DISA ACQUISITION DESKBOOK

JUSTIFICATIONS AND APPROVALS

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JUSTIFICATIONS AND APPROVALS (J&As)

INTRODUCTION

This Deskbook provides procedures/guidance in the development of DISA J&As/Determinations and Findings (D&Fs) required under FAR Part 6. The target audience is personnel in the requirements office (DARS Part 2), working closely with the contracting officer. The information contained in this Deskbook comes from acquisition regulations, directives and practical experience.

The most frequently used references for development of J&As are the following:

- Federal Acquisition Regulation (FAR), Part 6
- Defense Federal Acquisition Regulation Supplement (DFARS), Part 206
- DISA Acquisition Regulation Supplement (DARS), Part 6

In case of a conflict with the provisions of this Deskbook, the FAR, DFARS or DARS take precedence.

I. General.

The procedures set forth herein identify statutory authorities for contracting without providing for full and open competition, thresholds, and approval authorities. Guidance, including sample language, is provided to help you prepare J&As.

II. Summary of Circumstances Permitting Other Than Full and Open Competition.

a. The following statutory authorities permit seven circumstances under which other than full and open competition may be used. (FAR 6.3, DFARS 206.3 and DARS 6.3):

| <u>AUTHORITY</u> | <u>DESCRIPTION</u> | <u>REQUIRED</u> <u>DOCUMENT</u> | <u>SYNOPSIS</u> <u>REQUIRED</u> (FAR 5.2) |
|---|--|------------------------------------|---|
| 1) <u>10 U.S.C.</u> <u>2304(c)(1)</u> FAR Subpart 6.302-1 | Only one responsible source and no other supplies or services will satisfy agency requirements. | J&A | YES FAR Part 5 (See FAR 5.207(e)(3) Re: CBD Note 22) |
| 2) <u>10 U.S.C.</u> <u>2304(c)(2)</u> FAR Subpart 6.302-2 | Unusual and compelling urgency Note: J&As may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition. | J&A | NO FAR Subpart 5.202(a)(2) See NOTE 1 |

| <u>AUTHORITY</u> | <u>DESCRIPTION</u> | <u>REQUIRED DOCUMENT</u> | <u>SYNOPSIS REQUIRED (FAR 5.2)</u> |
|--|---|------------------------------|--|
| 3) <u>10 U.S.C.</u> <u>2304(c)(3)</u> FAR Subpart 6.302-3 | Industrial mobilization; engineering, developmental, or research capability; or expert services. | J&A | NO FAR Subpart 5.202(a)(10) See NOTE 2 |
| 4) <u>10 U.S.C.</u> <u>2304(c)(4)</u> FAR Subpart 6.302-4 | International Agreement. | J&A See NOTE 3 | NO FAR Subpart 5.202(a)(3) |
| 5) <u>10 U.S.C.</u> <u>2304(c)(5)</u> FAR Subpart 6.302-5 | Authorized or required by statute. | J&A | YES/NO FAR Subpart 5.202(a)(10) See NOTE 4 |
| 6) <u>10 U.S.C.</u> <u>2304(c)(6)</u> FAR Subpart 6.302-6 | National security. | J&A | NO FAR Subpart 5.202(a)(1) See NOTE 5 |
| 7) <u>10 U.S.C.</u> <u>2304(c)(7)</u> FAR Subpart 6.302-7 | Public interest. Written determination to use this authority must be made by by the Secretary of Defense with Congressional notification not less than 30 days before award of the contract. | D&F See NOTE 6 | NO FAR Subpart 5.202(a)(10) See NOTE 7 |

NOTE 1: No synopsis is required when the proposed contract action is made under the conditions described under this authority, and the government would be seriously injured if the agency complies with the time periods specified in FAR 5.203; however, agencies shall request offers from as many potential sources as is practicable under the circumstances.

NOTE 2: Exception to synopsis is authorized when advance notice is not appropriate or reasonable for a proposed contract action under the conditions of this authority.

NOTE 3: J&As are not required under this authority **if** an international agreement or treaty (e.g., Letter of Offer and Acceptance, Memorandum of Understanding) has the effect of requiring the use of other than full and open competition (see DFARS 206.302-4). But, the Head of the Contracting Activity (HCA) is required to prepare a document describing the terms of an agreement or treaty or the written directions. This HCA document will only suffice in cases when the host country requests and documents in the agreement the specific company and supplies/services they wish to procure. Likewise, if a proposed acquisition is to support NATO, then the agreement must state the company and supplies/services procuring. If the host country **does not** request

a specific company, a J&A shall be prepared using one of the other exceptions. For example, 10 U.S.C. 2304 (c)(1), only one responsible source.

NOTE 4: YES when a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; NO for brand name commercial items for authorized resale through commissaries or other similar facilities.

NOTE 5: When the contracting officer determines that the synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security, no synopsis is required; however, agencies shall request offers from as many potential sources as is practicable under the circumstances.

NOTE 6: D&F shall not be made on a class basis. A written determination by the Secretary of Defense (DFARS 206.302-7(c)) is required to use this authority.

NOTE 7: Exception to synopsis is authorized when advance notice is not appropriate or reasonable for a contract action under the conditions of this authority.

b. When *establishing or maintaining alternative sources*, a **D&F**, using the format set forth in DFARS 206.2, shall support every contract action under FAR 6.202.

| <u>AUTHORITY</u> | <u>DESCRIPTION</u> | <u>REQUIRED DOCUMENT</u> | <u>SYNOPSIS REQUIRED</u> (FAR 5.2) |
|------------------------------|--|------------------------------|---|
| <u>FAR Subpart 6.202</u> | Establishing or maintaining alternative sources. | D&F | YES FAR Part 5 |

c. *Sole source acquisitions under the Test Program for Certain Commercial Items* (FAR 13.5). When using simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5M, a J&A is required using the required format at FAR 6.303-2 and DARS 6.303-90.

| <u>AUTHORITY</u> | <u>DESCRIPTION</u> | <u>REQUIRED DOCUMENT</u> | <u>SYNOPSIS REQUIRED</u> (FAR 5.2) |
|--|---|------------------------------|---|
| <u>Section 4202 of the Clinger Cohen Act of 1996</u> | Test Programs for Certain Commercial Items (check FAR 13.500 for expiration date) | J&A | *NO FAR 5.202(a)(2) |

*No synopsis is required when making the proposed contract action under the conditions described under this authority and the government would be seriously injured if the agency complies with the time periods specified in FAR 5.203; however, agencies shall request offers from as many potential sources as is practicable under the circumstances.

III. Special Concerns.

a. Lack of planning or inadequate funds (FAR 6.301(c)) doesn't justify contracting without providing for full and open competition. Justifications must support the authorities cited in a stand-alone document.

b. Relationship to Acquisition Plans (APs): APs should be approved before J&As/D&Fs. Approval of an AP with a proposed acquisition to be awarded based on other than full and open competition does not eliminate the requirement for a J&A or D&F. J&As address AP applicability/status in "paragraph 13" of the required format (DARS 6.3).

c. J&As for other than open full and open competition should normally be prepared/approved after CBD synopsis/results to ensure that other viable sources don't exist before entering negotiations. Industry responses to an other than full and open competition synopsis are the single most valid indicator of whether to consider competition for a proposed procurement. If, after the publication of the synopsis in the CBD, no inquiries were received from viable alternate sources, the Agency would be acting in good faith by proceeding with the procurement. In order for you to discuss the full results of the CBD, keep in mind that contract actions shall be published in the CBD at least 15 days before the release of a solicitation (w/exceptions) with at least a 30-day response time from the date the solicitation is issued (w/exceptions) (total 45 days) (FAR 5.203).

d. COMMENCEMENT OF NEGOTIATIONS. Contracting Officers may commence negotiations after approval of the J&A/D&F (exception, FAR 6.303-1(e)) and approval of the prenegotiation business clearance. Further, FAR 15.406-1(b) states, in part: "The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action..."

IV. Format.

The required format (including signature page) is set forth in DARS 6.3. To assist you in preparing J&As, guidance and sample language for each required paragraph is provided on the following pages.

Header (Format) (Required on each
page of the J&A):
Originator's Code
Complete Procurement Request
Number

**JUSTIFICATION AND APPROVAL
TO PROCURE USING OTHER THAN FULL AND OPEN COMPETITION**

Upon the basis of the following justification, I, as _____ (*fill in appropriate approval authority), hereby approve the use of other than full and open competition for the proposed contractual action pursuant to the authority of 10 U.S.C. 2304 () (). (Insert appropriate statutory authority (exception) permitting other than full and open competition (FAR 6.302); use only **one** exception per J&A).

***Approval authorities/thresholds (DARS 6.304):**

\$0 - \$500K I, as Contracting Officer
Over \$500K - \$10M I, as Procuring Activity Competition Advocate
Over \$10M - \$50M I, as Head of the Contracting Activity
Over \$50M I, as Senior Procurement Executive

JUSTIFICATION

1. **Agency and Contracting Activity** (FAR 6.303-2(a)(1)). Defense Information Systems Agency (insert the appropriate contracting office).
2. **Nature/Description of Action(s)** (FAR 6.303-2(a)(2)). Identify the type of action(s) being issued (e.g., new contract, contract modification, etc.), for what and to whom (e.g., contractor's name if sole source). Indicate the type of contract contemplated. In the case of a class J&A, indicate the period the J&A will be in effect. Identify the contract number if action results in a contract modification.
3. **Description of Supplies/Services** (FAR 6.303-2(a)(3)). Provide a brief description of supplies and/or services procuring (include quantities and the project/program/system that the proposed acquisition is supporting). Provide the total estimated cost of the acquisition covered by this J&A. The total estimated cost consists of the base requirement plus any option requirements. (Amounts must coincide with the approved Acquisition Plan.) In addition, provide the fiscal year (FY) and the type of money used. See the following example:

The total estimated cost of the proposed acquisition is \$18M,
funded as follows:

| | FY-XXXX BASE | FY-XXXX OPTION | TOTAL |
|--------------|-----------------|-------------------|----------------|
| R&D | \$ 5.0M | \$ 8.0M | \$13.0M |
| O&M | \$ 5.0M | \$ -0- | \$ 5.0M |
| <u>TOTAL</u> | <u>\$10.0M</u> | <u>\$ 8.0M</u> | <u>\$18.0M</u> |

4. **Identification of Statutory Authority** (FAR 6.303-2(a)(4)). Cite the **same** statutory authority permitting other than full and open competition that you cited above in the opening statement (including its title). For example: 10 U.S.C. 2304(c)(1), Only one responsible source and no other supplies or services will satisfy agency requirements.

5. Demonstration of Contractor's Unique Qualifications (FAR 6.303-2(a)(5)).

This is the most important part of the J&A and must contain sufficient facts and rationale to justify the use of the specific authority cited. Contracting without providing for full and open competition **shall not** be justified on the basis of lack of advance planning by the requiring activity or concerns related to the amount of funds available (e.g., funds will expire). The following samples will help you write your rationale:

a. **Only One Responsible Source** (FAR 6.302-1) - In the case of a follow-on contract for continued development or production of a major system or **highly specialized** equipment/services, the rationale must first justify the supplies/services as being "**highly specialized**." The rationale must then justify "either" **substantial duplication of cost** to the government that is not expected to be recovered through competition, or **unacceptable delays** in fulfilling the agency's requirements, whichever situation applies. If both of these situations apply, use the rationale for either one of the two situations, or both.

When using this exception, the rationale should include the following information:

(1) Introduction:

(a) State what work the current contractor has been performing. Include the current contract number, basis of award for that contract award (competitive/sole source) and contract award date.

(b) State when the current contract will expire.

(c) If planning a follow-on competitive acquisition, so state and give planned award date.

(d) If the planned acquisition is a "bridge" effort that contains options, so state and explain why options are necessary.

(2) State the contractor's unique/highly specialized capabilities and/or qualifications. You must convincingly substantiate why the contractor is the only one who can perform this effort.

(3) Discuss either or both of the following situations:

(a) When the rationale is based on substantial duplication of cost, state the approximate cost and the work associated with the cost (e.g., training required so that another source could acquire the skills necessary to perform the effort, equipment, facilities, etc.). State that this cost isn't recoverable through competition. **State how the estimate was derived (basis for duplication) in paragraph 9 (see paragraph 9 for sample language).**

(b) When the rationale is based on unacceptable delay, state how long it would take someone else to obtain this capability and why, and the impact or problem caused by the delay.

(4) State the conclusion. For example: Accordingly, based on the above, the planned source is the only source that can perform this effort without either substantial duplication of cost or unacceptable delay.

The following is an example of a "bridge" effort based on unacceptable delay. The information required above with its corresponding number is annotated throughout the example below (paragraphs 5(a)(1) through 5(a)(4)).

5a(1)(a) The proposed acquisition is a continuation and extension of work performed by XYZ under contract DCA100-98-C-0000 which was competitively awarded in March 1993. This contract requires XYZ to furnish engineering services for maintenance of Global Operations Systems (GOS), now completing development. **5a(1)(b)** The current contract will expire in the fourth quarter FY-1997. **5a(1)(c)** A follow-on competition is in process and the anticipated award is in the second quarter of FY-1998. This effort will provide a continuation of support until award of the competitive action. **5a(1)(d)** The option will provide continuity should there be a delay in the award of the competitive contract and/or a 6-month transition period may be required should the incumbent not be selected.

5a(2) XYZ, the original developer and sole maintainer of the GOS software for the last 3 years, has unique and detailed knowledge of GOS architecture, software enhancement requirements and has priority rights to the software. Because of this experience, XYZ is the only firm that currently has the capability to analyze software performance data, identify deficiencies, and provide the software engineering solutions to high priority problems crucial to the GOS. GOS has developed a team of experts that are highly specialized in GOS software maintenance capability. This background is critical to ensure continuity of uninterrupted support for the GOS at various integration sites.

5a(3)(b) Award to any other source would result in a delay of approximately 6 months to develop the expertise to perform this effort. This delay would have a significant impact on testing scheduled for the second quarter FY-1998. If these services were not continued, the system would operate in a degraded mode making it impossible to conduct the test as scheduled because of current commitments and the availability of other systems with which GOS must be compatible. This could result in major delays in GOS installation, affecting operational readiness that would compromise our national defense.

5a(4) Accordingly, XYZ is the only firm capable of providing the engineering services without an unacceptable delay.

b. **Unusual and Compelling Urgency** (FAR Subpart 6.302-2) - Provide an explanation of the serious injury, financial or other to the government, nature of the urgency, the reasons for its occurrence and why it is "urgent and compelling," especially if there is an impact on military readiness.

c. **International Agreement** (FAR 6.203-4) - DFARS 206.302-4(c) states that a written J&A as described in FAR Subparts 6.303 and 6.304 is not required under certain conditions; however, if a J&A is not used, the HCA must prepare a document in accordance with DFARS 206.302-4(c).

6. **Commerce Business Daily (CBD) Announcement/Potential Sources** (FAR 6.303-2(a)(6)). J&As should normally be prepared **after** CBD synopsis is published in order to examine the results of industry inquiries and reach a conclusion concerning the potential for competition. State the synopsis number, published date, and that the government will comply with CBD Note 22 in accordance with FAR 5.207(e)(3).

a. If written responses have been/were received, cite the number of responses received and tell the reader to see paragraph 10 below for further information.

b. If the effort isn't synopsized before issuance of the J&A, state why. In addition, state that synopsizing the effort in the CBD and any responses received will comply with the provisions of FAR Part 5.

c. If waiving the synopsis due to urgency, cite the justification for the waiver.

7. **Determination of Fair and Reasonable Cost** (FAR 6.303-2(a)(7)). Provide a narrative of the measures to be taken to ensure that the price will be fair and reasonable (e.g., cost and/or price analysis (FAR 15.4)). For example: Based on the historic cost information currently available, the contracting officer has adequate information to ensure that the cost to the government for this acquisition will be fair and reasonable.

8. **Description of Market Research** (FAR 6.303-2(a)(8)). Provide a description of the market research conducted and the results or if not conducted, state the reason(s), in accordance with FAR Part 10. Market research is any attempt to determine whether other sources exist, including written and telephone contacts with knowledgeable sources (sources inside/outside the government, market tests, announcements in the trade journals, CBD synopsis, etc.). Cross reference with paragraph 6 of the J&A.

9. **Any Other Supporting Facts** (FAR 6.303-2(a)(9)). Any other facts supporting the use of other than full and open competition, such as the following:

a. When technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are otherwise not available, provide an explanation (FAR 6.303-2(a)(9)(i)).

b. When citing FAR 6.302-1 (only one responsible source) for follow-on acquisitions where the justification is based on "substantial duplication of costs" that won't be recovered through competition, provide the following: estimate of the cost to the government that would be duplicated and how the estimate was derived. For example: The estimated duplication of cost in the amount of \$XXM is based on actual costs incurred over the past 4 years (FAR 6.303-2(a)(9)(ii)).

c. When citing FAR 6.302-2 (unusual and compelling urgency), give additional data, estimated cost, or other rationale as to the extent and nature of the harm to the government (FAR 6.303-2(a)(9)(iii)).

10. **Listing of Interested Sources** (FAR 6.303-2(a)(10)). Provide information on written responses to the synopsis and other expressions of interest. You should only address **written** responses or inquiries. All responses must be resolved before approval of the J&A. For example: 1) X, Inc., Y Company and Z Corporation requested a copy of the Request for Proposal but after review, informed you that they didn't intend to bid on this effort. 2) X, Inc. requested a copy of the Request for Proposal for information purposes only.

11. **Actions Taken to Remove Barriers to Competition** (FAR 6.303(a)(11)). Describe actions taken to ensure that future acquisitions for this effort will be competed, including challenges to restrictive data markings, acquisition of data rights, the preparation of a performance-based work statement (if appropriate) by (include a date), etc. If planning a competition, include the estimated date when the competitive procurement is to take place. If competition isn't planned, so state and provide appropriate justification.

12. **Statement of Period of Performance and/or Delivery Schedule** (DARS 6.303-2(a)(S-90)). Give the starting and completion dates for period of performance/delivery schedule of the requirements (firm/options) covered by this J&A. Providing the following examples:

a. The period of performance for the proposed acquisition (base requirement) is from the effective date of contract award through 30 SEP XXXX. The period of performance for the option is from the effective date of option exercise through 31 MAR XXXX.

b. Deliveries (base requirements) are required 18 months after the effective date of contract award with the option delivered 12 months after date of option exercise.

13. **Reference to the Approved Acquisition Plan (AP)/Program Plan (PP)** (DARS 6.303-2). State the title of the approved AP applicable to this effort, AP number and date approved. If no AP is required, state so and why. State the title of the approved PP applicable to this effort, and date approved.

14. **Reference to Information Technology (IT) (includes National Security System (NSS) IT), Information Management (IM), and Information Assurance (IA) Requirements** (DARS 6.303-2). Discuss compliance with all IT/NSS IT, IM and IA requirements. Examples: 1) This effort was coordinated with the Information Management Officer relative to compliance with IT and IM standards/requirements and the Information System Security Manager relative to compliance with IA and traditional security requirements. 2) This effort contains IT requirements estimated at or over \$3M and requires OASD (C3I) review/approval through DISA's OCIO. OASD's approval was obtained on (include the date) or OASD approval is in process and planned approval is (include date). 3) Not applicable. This effort is non-IT.